IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 12TH DECEMBER 2007 / 21ST AGRAHAYANA 1929

WA.No. 925 of 2007

AGAINST THE JUDGEMENT IN WPC.3033/2005 Dated 07/12/2005
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APPELLANT/4[t]TH RESPONDENT:

K.P.HAMZA,
S/O.MOIDEEN HAJI,
IRUMBUZHI DESOM,
ERNAD TALUK,
MALAPPURAM DISTRICT.

B**Y ADV. SRI.G.HARIHARAN**

RESPONDENTS/PETITIONER & RESPONDENTS:
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1. **M.MOIDEEN,**
   S/O.MUHAMMED,
   KOORIMANNIL P.O,
   IRUMBAZHI,
   MALAPPURAM DISTRICT.

2. **STATE OF KERALA**,
   REPRESENTED BY THE
   SECRETARY TO GOVERNMENT,
   GENERAL EDUATION DEPARTMENT,
   SECETARIAT,THIRUVANANTHAPURAM.

3. **THE DEPUTY DIRECTOR OF EDUCATION**,
   MALAPPURAM.

4. **THE DISTRICT COLLECTOR**,
   MALAPPURAM.

5. **ANAKKAYAM GRAMAPANCHAYATH**,
   REPRESENTED BY ITS SECRETARY,
   ANAKKAYAM P.O,
   MALAPPURAM DISTRICT.

R1 BY ADV. SRI.R.RAMADAS
R2 TO R4 BY SR. GOVT. PLEADER SMT. K. MEERA.
R5 BY ADV. SRI.K.PRAVEEN KUMAR

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 12/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, CJ. & K.M. JOSEPH, J.

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WRIT APPEAL No.925 of 2007

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Dated this the 12th day of December, 2007.

JUDGMENT

H.L.DATTU, CJ,

Fourth respondent in the writ petition is the appellant in this writ appeal. He calls in question the correctness or otherwise of the orders passed by the learned Single Judge in W.P.(C) 3033 of 2005 dated 7th December, 2005. By the impugned order, the learned Single Judge, while allowing the writ petition, has issued certain directions to the Village Panchayath as well as to the District Collector, Malappuram.

2. The facts in brief are: - The petitioner in the writ petition is the President of the Parent Teachers Association of G.M.U.P. School, Irumbuzhi. The prayer sought in the writ petition is to direct respondents 1 to 3 to initiate appropriate proceedings to acquire 65 cents of land in R.S. No. 341/1 and 341/3 of Anakkayam village for the purpose of construction of school building for G.M.U.P. School, Irumbuzhi.

3. The Deputy Director of Education, Malappuram, by his letter dated 22nd October, 1993, had requested the District Collector, Malappuram to acquire 65 cents of land situate in Re-survery Nos. 341/1 and 341/3 of Anakkayam Village for the purpose of construction of a school building. The main grievance of the petitioner in the writ petition was that inspite of the repeated requests made, respondents 1 to 3 have not acted upon his representation, nor they have acquired the land in Sy.Nos. 341/1 and 341/3 for the purpose of construction of the School building.

4. The learned Single Judge, taking note of the communication

issued by the Deputy Director of Education, Malappuram and the inaction on the part of the District Collector in acquiring the land identified by the Deputy Director of Education for the purpose of construction of the building, has directed the District Collector to take expeditious steps to initiate appropriate acquisition proceedings to acquire the land for the purpose of construction of the School building.

5. The fourth respondent in the writ petition, being aggrieved by the orders and the directions so issued by the learned Single Judge, is present before us in this Writ Appeal.

6. Sri. G.Hariharan, learned counsel appearing for the appellant would submit that the learned Single Judge, without properly appreciating the necessity for the acquisition of the land for the purpose of construction of the building, has directed the District Collector to acquire the land merely on the request made by the Deputy Director of Education, Malappuram. Learned counsel further states, that neither the Grama Panchayat nor the State Government has enough and sufficient funds for the purpose of acquisition of the land as well as for the purpose of construction of the School building. It is further stated that the Grama Panchayat is in arrears of rentals payable to the appellant from 1996 onwards and without paying that amount, the learned Single Judge ought not to have directed the District Collector to acquire the land for the purpose of construction of the School building.

7. In our view, if for any reason the Grama Panchayat is in arrears of rentals payable to the appellant, he could always approach the Grama Panchayat for payment of the arrears of rentals. Inspite of his request, if arrears are not paid, he could always approach the appropriate forum by initiating appropriate proceedings.

8. Secondly, if for any reason, the respondents acquire the property of the appellant, that will be done under the sovereign powers of the State Government.

The appellant can question the said acquisition, only if there is any violation of the statutory provisions of the Land Acquisition Act. Merely because the State Government does not have sufficient funds, it does not mean to say that they cannot acquire the land for the purpose of construction of the School building. The State Government can always generate enough and more funds, not only for the acquisition of the land but also for the construction of the School building. In that view of the matter, keeping in view the facts and circumstances of the case, we are of the opinion that the appellant has not made out a prima facie case for us to interfere with the orders passed by the learned Single Judge. Therefore, the Writ Appeal requires to be rejected and it is rejected.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE

K.M. JOSEPH,
JUDGE

sb/dk.